

Department of Energy

923.7001

Subpart 923.7—Contracting for Environmentally Preferable and Energy-efficient Products and Services

Published at 75 FR 57693, Sept. 22, 2010.

EFFECTIVE DATE NOTE: At 75 FR 57693, Sept. 22, 2010, subpart 923.7 was removed, effective October 22, 2010.

923.703 Policy.

Executive Order 13149, dated April 21, 2000, entitled *Greening the Government Through Federal Fleet and Transportation Efficiency*, provides that the Federal Government exercise leadership in the reduction of petroleum consumption through improvements in its motor fleet fuel efficiency and increases in its use of alternative fuel vehicles and alternative fuels. The specific provisions affecting the Department's acquisition program are as follows. Part 2 of the Executive Order establishes goals for the reduction of petroleum consumption in the motor vehicle fleet and requires the development of strategies for the increased use of alternative fuel vehicles, increased use of alternative fuels accompanied by improved alternative fuel infrastructure, and the acquisition of higher fuel economy vehicles. Procurement personnel involved in the acquisition of motor vehicles, including lease, and motor vehicle products should familiarize themselves with these requirements and assist their fleet management personnel in acquiring vehicles and products which comply with the requirements of the Executive Order and the Department's compliance strategy. In addition, section 403 of the Executive Order provides for the acquisition of environmentally preferable motor vehicle products, including the use of biobased motor vehicle products. Environmentally preferable motor vehicle products include re-refined motor vehicle lubricating oils, retread tires, recycled engine coolants, and bio-based motor vehicle products. Use of these products is addressed by the Department's Affirmative Procurement Program required by 48 CFR (FAR) 23.404, Agency affirmative procurement pro-

grams, as implemented by 48 CFR (DEAR) 923.405, Procedures [DOE supplemental coverage—paragraph (e)]. Environmentally preferable motor vehicle products are among the items designated in the Comprehensive Procurement Guidelines, which lists products with recovered content that Federal agencies and their contractors are to buy. That list is published by the Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6962, and regulations published at 40 CFR part 247.

[68 FR 52131, Sept. 2, 2003]

Subpart 923.9—Contractor Compliance With Environmental Management Systems

EFFECTIVE DATE NOTE: At 75 FR 57693, Sept. 22, 2010, subpart 923.9 was added, effective October 22, 2010.

§ 923.903 Contract clause.

The FAR Environmental Management Systems clause at 52.223-XX should be used in contracts where the contractor operates a DOE site or portion thereof. Some DOE sites have a single Environmental Management System for the site while others have separate Environmental Management Systems for various portions of the site which may be operated by different contractors. Check with local environmental management personnel regarding the applicability of the FAR 52.223-XX clause to a specific contract.

[75 FR 57693, Sept. 22, 2010]

Subpart 923.70—Environmental, Energy and Water Efficiency, Renewable Energy Technologies, and Occupational Safety Programs

923.7001 Nuclear safety.

The DOE regulates the nuclear safety of its major facilities under its own statutory authority derived from the Atomic Energy Act and other legislation. The DOE also regulates, under certain specific conditions, the use by its contractors of radioactive materials

and ionizing radiation producing machines.

[49 FR 12003, Mar. 28, 1984, as amended at 59 FR 9106, Feb. 25, 1994; 74 FR 36365, July 22, 2009]

923.7002 Worker safety and health.

(a)(1) Except when the clause prescribed at 970.1504-8(c) is used, the clauses entitled “952.223-76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health” or “952.223-77, Conditional Payment of Fee or Profit—Protection of Worker Safety and Health” implement the requirements of section 234C of the Atomic Energy Act for the use of a contract clause that provides for an appropriate reduction in the fee or amount paid to the contractor under the contract in the event of a violation by the contractor or any contractor employee of any Departmental regulation relating to the enforcement of worker safety and health concerns. The clauses, in part, provide for reductions in the amount of fee, profit, or share of cost savings that is otherwise earned by the contractor for performance failures relating to worker safety and health violations under the Department’s regulations.

(2) The clauses provide for reductions of fee or profit that is earned by the contractor depending upon the severity of the contractor’s failure to comply with contract terms or conditions relating to worker safety and health concerns. When reviewing performance failures that would otherwise warrant a reduction of earned fee, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range specified in the clauses. Some of the mitigating factors that must be considered are specified in the clauses.

(3) The contracting officer must obtain the concurrence of the Head of the Contracting Activity—

(i) Prior to effecting any reduction of fee or amounts otherwise payable to the contractor in accordance with the terms and conditions of the clause entitled “Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and

Protection of Worker Safety and Health” or of the clause entitled “Conditional Payment of Fee or Profit—Protection of Worker Safety and Health”; and

(ii) For determinations that no reduction of fee is warranted for a particular performance failure(s) that would otherwise warrant a reduction.

(4) Section 234C of the Atomic Energy Act provides that DOE shall either pursue civil penalties (implemented at 10 CFR part 851) for a violation under section 234C of the Atomic Energy Act (42 U.S.C. 2282c) or a contract fee reduction, but not both.

(5) The contracting officer must coordinate with the Office of Price Anderson Enforcement within the Office of the Assistant Secretary for Health, Safety and Security (or with any designated successor office) before pursuing a contract fee reduction in the event of a violation by the contractor or any contractor employee of any Departmental regulation relating to the enforcement of worker health and safety concerns.

[68 FR 68777, Dec. 10, 2003, as amended at 74 FR 36365, July 22, 2009]

923.7003 Contract clauses.

(a) A decision to include or not include environmental, safety and health clauses in DOE contracts shall be made by the contracting officer in consultation with appropriate Office of Health, Safety and Security personnel.

(b) When work is to be performed at a facility where the DOE will exercise its statutory authority to enforce occupational safety and health standards applicable to the working conditions of the contractor and subcontractor employees at such facility, the clause at 952.223-71, Integration of Environment, Safety, and Health into Work Planning and Execution, shall be used in such contract or subcontract if conditions (b)(1) through (3), are satisfied—

(1) DOE work is segregated from the contractor’s or subcontractor’s other work;

(2) The operation is of sufficient size to support its own safety and health services; and

(3) The facility is government-owned, or leased by or for the account of the government.